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PATENT
Attorney Docket No. 249.303
Express Mail Label No. EV616526042US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor : Joseph S. Bieganek and Thomas R. Hetzel
Serial No. : 10/628,860
Filed : July 28, 2003
Title : CONTOURED SEAT CUSHION AND METHOD FOR
OFFLOADING PRESSURE FROM SKELETAL BONE
PROMINENCES AND ENCOURAGING PROPER
POSTURAL ALIGNMENT

Group Art Unit : 3673
Confirmation No. : 3850
Examiner : Michael Safavi

RESPONSE TO RESTRICTION REQUIREMENT

In response to the office action mailed March 24, 2005, in which restriction was required between claims 1, 3, 4, 6-21, 38, 39 and 44-47 of Group 1, claims 22, 24-27, 29-37, 40-43 and 48-52 of Group II, and claims 31-37, 51 and 52 of Group III, the Applicant hereby elects the claims of Group I (claims 1, 3, 4, 6-21, 38, 39 and 44-47) for further prosecution. This election is made with traverse.

The inventions in Group II and Group I are asserted to be distinct as a process of making and a product made. The division of the inventions in Groups I and II is improper because the product as claimed cannot be made by a materially different process as claimed, contrary to the assertions in the restriction requirement. The cushion defined in the Group I claims requires relief areas and support areas that are spaced relatively more away from and relatively more toward an expected presentation of specifically-defined aspects of an anatomical shape of the pelvic area of the person when the person is seated on the support contour. The claims of Group II require, in the manner set forth, defining relief areas and support areas and establishing relatively greater clearance of the relief areas and relatively lesser clearance of the support areas relative to specifically-defined aspects of the anatomical shape of the pelvic area. A materially different process that does not define the relief and support areas and establish a relatively greater clearance of the relief areas, and a relatively lesser

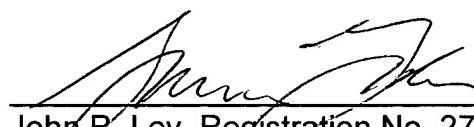
clearance of the support areas, could not produce the cushion of Group I as asserted. It is the claims which are subject to the restriction requirement, and the language of those claims must support the asserted basis for the restriction requirement-not some contrived basis which is outside the scope of the claims.

The inventions of Groups I and III are asserted to be distinct as a product and process of use. It was asserted that the product as claimed can be used in a materially different process of using that product because the cushion could be used as a support for any portion of the body and does not need to be used to offload support pressure and shear force from skin. The product as defined in the claims cannot be used in a materially different process because supporting a portion of the body with the cushion other than what is defined in the claims is outside of the scope of the invention. Again, the language of the claims must support the asserted basis for the restriction requirement-not some contrived basis which is outside the scope of the claims.

Furthermore, regarding the restriction of inventions of Groups I and III and Groups II and III, when claims to a product, a process of making, and a process of use are included in a single application a three way restriction requirement can only be made where the process of making is distinct from the product. 37 C.F.R. 1.141. As stated above, the Group II claims should not be divided from the Group I claims because the process of making and the product are not distinct, having regard for the language of the claims.

The Examiner is encouraged to telephone the undersigned to resolve any issues which would advance this application to issue.

Date: 4-25-05


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CERTIFICATE OF MAILING BY EXPRESS MAIL

Mail Stop Amendments
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

The undersigned hereby certifies that the attached Response to Restriction Requirement; Certificate of Mailing by Express Mail; and Return Card, relating to the above application were deposited as "Express Mail", Express Mail Label No. EV616526042US, with the United States Postal Service, addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 25th day of April, 2005.

4/25/05
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Alley Muncey
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